

EXHIBIT 39

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity
as SECRETARY OF THE U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

C.A. No. 1:25-cv-00196-MRD-PAS

DECLARATION OF ELANA MARTON

1. I, Elana Marton, declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct:

2. I am the Deputy Director and Counsel of the New York State Council on Children and Families (CCF). I am familiar with the information in the statements set forth below either through personal knowledge, in consultation with CCF staff, or from documents that have been provided to and reviewed by me.

3. I submit this Declaration in support of the Plaintiff States' Motion for a Preliminary Injunction.

Professional Background

4. CCF is a small executive state agency responsible for supporting cross-system coordination and collaboration among New York State's health, education, and human service systems to improve outcomes for all of New York's children and families.

5. I have worked at CCF for nearly 18 years, providing legal counsel and programmatic support and oversight of agency operations, including federal grant administration.

6. Since 1991, CCF has administered the Head Start Collaboration Project, a grant staffed by the New York State Head Start Collaboration Director housed at CCF, and funded by the Office of Head Start (OHS) under the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS). The Head Start Collaboration Project provides a structure and a process for OHS to work with state agencies and local entities to leverage common efforts and resolve challenges to formulate, implement, and improve state and local policies and practices to best support young children and their families.

7. The New York State Head Start Collaboration Project conducts community needs assessments to assess significant changes in New York communities that may affect stakeholders. Such assessments help programs evaluate how major shifts may impact operations, services, and families. Additionally, the Head Start Collaboration Project Director monitors and responds to common challenges, like those resulting from the rapid change in directives and operations by HHS to the administration of Head Start grants since late January 2025.

The Head Start Program

8. Head Start provides vital services at no cost to eligible families with young children, birth to age 5. Eligible families include those with low-incomes, children in foster care, or children living in temporary housing. In addition to providing high quality child care and early childhood education, Head Start programs connect children and families to social services and supports. Head Start programs integrate state benefit programs to provide children with meals and snacks during the day, as well as diapers for young children, enrollment assistance in health insurance plans, and supports for parents including connections to career services and adult education. Many Head Start

families live paycheck to paycheck, making them susceptible to homelessness if they face job loss. The same is true of many Head Start staff whose wages are so low that they struggle to make ends meet.

9. The day-to-day operations of the Head Start program historically have been administered at the federal level by OHS employees working out of HHS Regional Offices. Regional office staff, including program specialists, fiscal specialists, and other program leadership, play an integral role in ensuring that the services to enrolled children and families are reliable, high-quality, and fiscally sound. They help interpret federal regulations and provide essential support to Head Start grant recipients. Prior to reconfiguring the Regional Offices of OHS in April 2025, the Region 2 office (located in New York City) supported the grant recipients in New York, New Jersey, the Virgin Islands, and Puerto Rico.

10. Head Start grant recipients typically are awarded a competitive grant for a five-year time frame. Grant recipients usually submit a refunding application once a year (with grant funding renewal dates staggered over the course of the year) to enable them to continue seamlessly providing services to enrolled children and families in their community. After the refunding application is approved by OHS, grant recipients receive a Notice of Award and have access to the Payment Management System (PMS) where they can draw down funds in small increments and with a lead time of just a few days, to pay operating expenses (payroll, rent food, etc.). Currently, however, because the federal government is operating under a Continuing Resolution until September 30, 2025, funding renewals by OHS are for shorter periods, six months (not annual) periods. This increased frequency of grant renewals places an additional burden on OHS, amplified by the elimination and reconfiguration of Regional Offices and significantly fewer OHS staff to support Head Start grantees, funding delays and disruptions now are common.

11. There are 147 Head Start Programs (administering 274 Head Start grants) in New York State, serving approximately 43,327 children from birth to school entry and 900 pregnant women. 14,400 staff serve these young children and families in 927 sites across the state.

12. I am providing this declaration to explain the impact of recent federal actions and directives, HHS and OHS reorganization, and other changes to OHS operations on Head Start programs in New York State. These changes have placed thousands of our state's most vulnerable children and families in limbo. Significant stress and hardship have been experienced due to the possible and actual disruptions to children's care, education, support services, food security, health, and well-being, and the possibility and actuality of parents having to miss work, risk losing their jobs, and/or drop out of education and vocational programs. Like Head Start children and families, many Head Start staff also live in or near poverty levels, and experience financial and mental health stressors when a paycheck is anticipated to be missed or delayed.

Recent Changes in Head Start Operations

13. On January 27, 2025, the Office of Management and Budget froze all funds for federal funding recipients in the HHS Payment Management System (PMS), including Head Start grant recipients. Following multiple legal challenges and injunctions, the freeze was reportedly lifted. Nevertheless, Head Start programs in New York continued to face challenges drawing down approved grant funds and experienced looming uncertainty about the availability of future funds. Approximately 20 Head Start programs¹ expecting a Notice of Award for refunding starting in

¹ Bedford-Stuyvesant Early Childhood Development Center, Inc. CEO Empowers, Inc., Columbia Opportunities, Inc., Committee for Early Childhood Development Day Care Center, Inc., Community Action Planning Council of Jefferson County, Inc., East Side House, Family Enrichment Network, Inc., Head Start Of Eastern Orange County, Opportunities for Otsego, Inc., The Community Program Centers of Long Island, LEAP (formerly Washington County Economic Opportunity Council), Lifeworks Community Action Agency, Inc., Long Island Child and Family Development Centers, Inc., Promesa Head Start, Tompkins Community Action, Ulster County Community Action Committee, Inc., United Talmudical Academy of Borough Park Head Start, Warren County Head Start, Inc., and West Harlem Community Organization, Inc.

April or May received no updates on the status of their applications. Similarly, grantees attempting to draw down funds received messages of 'pending' or 'in process' when they requested funds in PMS. As Head Start programs rely on steady, predictable access to maintain program operations to pay staff, rent, food vendors, and other essential expenses, these 20 programs had to make difficult choices with limited information about whether to remain open or suspend operations.

14. In early February 2025, the Cattaraugus-Wyoming County Head Start program was forced to temporarily close when approved funds could not be accessed. Approximately 200 children had no care, and their parents were not able to work or go to school, and 87 program staff were furloughed. After the Head Start center re-opened, the agency's chief executive officer reported that parents and staff remained very concerned. She said parents were starting to look at other placements and staff were asking whether they should start looking for a new job.

15. In early February 2025, the Great Neck-Manhasset Head Start, one of the smallest Head Start programs in the state, with an annual grant of \$577,859 to serve 46 families and employ 11 staff, was on the brink of closure. The program notified families that it would have to suspend programming if they could not access their funding. While funding was received at the last minute, the program and the families faced an existential threat.

16. On April 1, 2025, the OHS regional office serving New York State (Region 2) was abruptly closed. Regional Offices have provided long-standing and essential operational assistance to Head Start grantees, ensuring the delivery of high-quality early childhood care, education, health, nutrition, and other supports. Before the closure of the Region 2 OHS, staff in this office administered approximately \$706.5 million in annual funding directly to Head Start programs in New York. Region 2 staff were consistently available to promptly respond to programmatic questions and needs. With the closure of the Region 2 OHS, New York Head Start grantees had no

designated federal staff to help them, with training and technical assistance questions, receiving/filing of required reports (e.g., of child injuries or accidents), providing updates on the status of grant applications or pending requests for payments, or answering questions on compliance arising with the rapidly changing federal landscape. With the enormous void left by the abrupt elimination of regional OHS staff on whom the state's Head Start grantees had long relied, the New York State Head Start Collaboration Director was inundated with frantic calls and questions. Concerns from Head Start programs on the brink of closing were heard, monitored, and shared, but in the absence of any guidance or assistance from OHS, no further aid could be offered.

17. Following the closure of the Region 2 OHS, and "reductions in force" eliminating more than half of the OHS staff in Washington D.C. (out of 230 staff, only 95 staff remained), Head Start grantees who attempted to contact OHS about their anticipated Notice of Award were directed to use the Correspondence feature within the Head Start Enterprise System (HSES) as their primary means of communication. Grantees reported receiving either a basic answer (e.g., OHS is working on your funding request) or no response. For general questions, grantees were directed to a centralized OHS email mailbox. As with questions submitted in HSES, grantees received limited or no answers to their questions. Desperate for help, some grantees then contacted the New York State Head Start Collaboration Director, who shared a federal contact she had learned about from the National Head Start Association and Head Start Collaboration Directors from other states. The OHS contact was Heather Wanderski, Program Operations Director, responsible for supporting grant recipient operations. No responses to these direct messages were reportedly received either.

18. On April 3, 2025, the chief financial officer from one Head Start program (Community Action Planning Council of Jefferson County) awaiting its Notice of Award,

anticipated to be received during the prior month of March, expressed how critical Head Start is to their community and the agency's determination to operate as long as possible to avoid an interruption in services. Yet, without access to the remainder of their funds, their resources would be stretched too thin if the renewal award was not received within a few days. The New York State Head Start Collaboration Director received similar messages from other Head Start grantees while they waited for their grant awards or access to funding requested through PMS.

19. Further delaying and exacerbating delays and uncertainties about funding, on April 7, 2025, the Department of Government Efficiency began intercepting Head Start grantees' requests to draw down their money for routines requests (such as payroll) through PMS by directing them to justify "what the award is for, what the funds will be used for, and why it is necessary." Programs were directed to send an email to defendthespend@hhs.gov, adding another step in the payment request process, largely duplicative of the grantee's Notice of Award. Programs were surprised by this new requirement and unclear about what was expected and whether they needed to answer the questions. In addition to concerns about payments being further delayed, questions about whether the new requirement violated the Paperwork Reduction Act (cited in the Notice of Award) were raised by the president of the New York State Head Start Association during an April 8th phone call with the New York State Head Start Collaboration Director.

20. On April 16, 2025, HHS amended its Grants Policy Statement² to add a certification requirement stating that agencies that accept grant awards "are certifying that ... they do not and will not during the term of this financial assistance operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws." In the event that a funding recipient engages in impermissible "DEIA," consequences might include

² <https://www.hhs.gov/sites/default/files/hhs-grants-policy-statement-april-2025.pdf>

a claw back of grant funds and civil and criminal liability for misrepresentation under the False Claims Act. No guidance was provided about what was considered a “diversity, equity, and inclusion (DEI) initiative, an activity “advancing” or “promoting” “DEIA,” or “discriminatory equity ideology.” In addition, no guidance was provided on how to reconcile these limitations on Head Start programming content with the conflicting obligations under the Head Start Act to serve the “diverse needs” of communities. Head Start grantees expressed confusion about applying this new Certification requirement (e.g., would specialized services for children with disabilities, food that meets cultural or religious dietary needs, or interpretation services violate the new requirements?). Grantees also reported their fear of the extreme consequences of non-compliance (losing their funding, having funds clawed back, or being subject to investigation).

21. Since March 2025, the New York State Head Start Collaboration Project Director conducted ongoing surveys to Head Start grantees identified as being at immediate risk of closure due to delays in receiving federal funds, specifically asking the programs to estimate how long they could operate if there was a disruption in funding. As many programs operate with razor thin margins, responses ranged from one week to a maximum of two months. Numerous messages of distress from Head Start programs in fear of closing were received, too. Programs shared that they were grappling with the difficult choice of whether to remain open while waiting for funds to become available, and facing the possibility of being unable to cover payroll, pay food vendors, rent, and other program expenses.

22. Programs also reported being unable to fill open staff positions due to funding uncertainty, threatening their ability to maintain sufficient staffing and continue operating.

23. Head Start grantees in New York continued to report funding issues. On April 14, 2025, the Warren County Head Start executive director was poised to suspend programming for

183 children and families and lay off 78 staff. Following multiple communications with elected officials, including U.S. Senators Schumer and Gillibrand and Congresswoman Stefanik, and the local media outlets, funding was received at the last possible moment. While closure was ultimately avoided, Head Start families experienced significant fear of the possible temporary and/or permanent disruption in services, as did program staff, some of whom reported looking for another job in anticipation of the program closing.

24. Even for programs that did not have to close, the anticipated delays and disruption in accessing funding threatened the continued operation and long-term viability of their programs and caused significant distress and harm. Head Start program directors repeatedly shared that the chaos and uncertainty were negatively impacting their Head Start parents and staff. Parents asked if they would have care so they could keep working, concerned that they would lose their jobs. Similarly, Head Start staff expressed concerns about the stability of their jobs. Program directors were heavily burdened by the additional work and troubled by the lack of certainty about the future to remain open and provide critical services to Head Start children and families in their communities.

Conclusion

25. The blitz of changes to the Head Start Program by HHS have been deeply concerning and harmful to New York State children and families and the dedicated staff who serve them. These changes have been marked by chaos, a lack of clarity, uncertainty, and panic. With the closure of the OHS Region 2 office, Head Start programs have been left without essential guidance and support, and their ability to deliver Head Start's high-quality early care and education, health, nutrition, and other supports significantly impeded, posing a substantial risk of irreparable and

ongoing harm to the thousands of children and families who depend on these critical services and the providers who care for them.


[NAME]

Date: 5/7/2025